

**Complaint 2004 - No. 2**  
**Senator Alex Deccio - Respondent**  
**DETERMINATION OF NO REASONABLE CAUSE - DISMISSAL**  
July, 2004

**I. Nature of the Complaint**

The amended complaint alleges that Senator Alex Deccio used public resources in the form of his state stationary to communicate with the complainant and the complainant's employer in an intimidating fashion on a personal issue.

**II. Conclusion and Order**

Based on a review of the Complaint and the Board's investigation, the Board concludes there is no reasonable cause to believe that Senator Deccio violated the Ethics Act. The Complaint is dismissed.

**III. Procedural History**

The Complaint was received by the Board on April 12, 2004. The Board discussed the case at two regularly scheduled Board meetings on May 20 and June 17. An investigation was ordered and several documents were obtained and a number of interviews were conducted.

**IV. Facts**

1. Senator and Mrs. Alex Deccio, as sellers, entered into a Purchase and Sale Agreement for the sale of their home in Yakima in July, 2003, to Mr. and Mrs. Bruce Mac Donald. Almost immediately there were disputes between the parties about the responsibility for certain repairs demanded by the buyers. The Deccios hired Mr. Rueben Ochoa, a worker known to them, to make certain repairs on the home for the benefit of the buyers. Mr. Ochoa was deemed unacceptable by Mr. Mac Donald and Mr. Ochoa informed the Deccios of that fact by phone. The exact words of that phone message are not known but it is probable that Mr. Ochoa said he was afraid of Mr. Mac Donald, that he could not understand Mr. Mac Donald because his (Ochoa's) English was not good enough and that he feared that Mr. Mac Donald could hurt his business.
2. Senator Deccio states that he interpreted this phone message as evidence of prejudice on the part of Mr. Mac Donald and he used his senate stationary, and perhaps his Legislative Assistant, to write and send a letter to Mr. Mac Donald (hereinafter referred to as the "Ochoa letter"). The letter urges Mr. Mac Donald to get in touch with the

Senator by a time certain to discuss Mr. Ochoa and attempts to make it clear that the issue is not the sale of the home but rather the perceived treatment of Mr. Ochoa. Mr. Mac Donald twice refused acceptance of the letter so Senator Deccio mailed it to TreeTop, Mr. Mac Donald's employer, in care of his supervisor. A brief note to the supervisor asked that the enclosed letter be given to Mr. Mac Donald as it was of some importance.

3. Mr. Mac Donald denies any prejudice toward Mr. Ochoa. He states that he refused to have Mr. Ochoa perform the repairs because Mr. Ochoa was not a licensed and bonded contractor. This point is conceded by Mr. Ochoa and Senator Deccio but they assert that the nature of the repairs did not require a licensed and bonded contractor. There is documentary evidence which indicates they are correct in their assessment. Senator Deccio states that he felt this reason given by Mr. Mac Donald, being based on a false premise, is a further indication that Mr. Mac Donald denied the work to Mr. Ochoa for other reasons.
4. Mr. Mac Donald's supervisor at TreeTop, Ms. Peggy McDonald, stated that neither she nor anyone else at TreeTop read the Ochoa letter and that she personally handed it to Mr. Mac Donald. She was aware that the Mac Donald's were buying the Deccio home and she assumed that was what the letter was about. According to TreeTop corporate legal counsel, Ms. Nancy Smith Buck, Mr. Mac Donald left TreeTop after less than one year of employment and approximately two months after the Ochoa letter was sent by the Senator. Mr. Mac Donald believes the Ochoa letter was a factor in him leaving TreeTop. There is no evidence to support that theory. While terms of Mr. Mac Donald's departure from TreeTop are, by mutual consent, contained in a confidentiality agreement, both Ms. McDonald and Ms. Smith Buck stated they would testify that they have no knowledge of Mr. Ochoa or any personal dispute between Mr. Mac Donald and Senator Deccio. Mr. Ochoa did not ask Senator Deccio to write Mr. Mac Donald on his behalf. Mr. Ochoa stated he didn't feel any prejudice from Mr. Mac Donald but that perhaps Senator Deccio misunderstood or misinterpreted the phone message because at times he had difficulty expressing himself in English. He does not believe he said that Mr. Mac Donald was prejudiced but rather that his English wasn't good enough to understand what Mr. Mac Donald was saying and that he was afraid Mr. Mac Donald could hurt him in a professional way.
5. The investigation revealed that Senator Deccio attempted to keep the issue of perceived prejudice to Mr. Ochoa separate from the numerous disputed issues surrounding the sale of the home. Both the Senator and Mr. Mac Donald engaged legal counsel on the purchase and sale of the residence and the Senator's counsel was instructed that the Ochoa matter was a legislative issue and he, the Senator, would deal with it, and not the attorney.

## **V. Analysis**

There is no evidence to support the allegation that Senator Deccio improperly interfered with Mr. Mac Donald's employment. Senator Deccio and Mr. Mac Donald were engaged in a personal dispute at the same time that Senator Deccio used public resources to write Mr. Mac Donald about Mr. Ochoa. However cumbersome this situation may have been, the facts do not suggest that the Ochoa letter was a pretense.

RCW 42.52.160 provides, in pertinent part:

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

(2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.

The Board has concluded, in Advisory Opinion 1995 - No. 17, and Complaint Opinions 1997 - No. 1 and 2003 - No. 1, that "official duties" are to be broadly interpreted to encompass a legislator's discretionary and nondiscretionary duties when legislative correspondence is involved. We also concluded that citizens expect their legislators to be ombudsmen and community leaders as well as legislators in the strict sense. However, where the member has a strong personal interest and benefit, the Board will carefully examine the possible "ombudsman" role.

Senator Deccio had some interest in having Mr. Ochoa complete a minor task at the residence but the number and cost of repairs in dispute between buyer and seller were so great that each party felt it necessary to hire their own attorney. The facts do not support a legal conclusion that reasonable cause exists to believe that Senator Deccio misused public resources for his own benefit or gain. Senator Deccio may have misread the situation as far as Mr. Ochoa was concerned but it was not unreasonable for him to assume that Mr. Ochoa was indirectly seeking his assistance.

James A. Andersen, Chair  
July \_\_\_\_, 2004